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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 228

FLORA REALTY AND INVESTMENT COMPANY,
Appellant,

vs.

CITY OF LADUE

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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Of Counsel.

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No. 228

FLORA REALTY AND INVESTMENT COMPANY,
A CORPORATION,
Appellant,

vs.

CITY OF LADUE, A MUNICIPAL CORPORATION,
Appellee

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

The Appellee in the above entitled cause for its statement in opposition to Appellant's statement as to jurisdiction herein, and in support of Appellee's motion to dismiss or affirm, respectfully shows the following:

I

Statement of Issues on Appeal

The question sought to be presented in this appeal is Appellant's claim that a portion of the Zoning Ordinance of the City of Ladue placing Appellant's tract of 104 acres

of land in the "A" 3-acre minimum area one family residence district wherein institutional use is forbidden except by special permit of the City Council as provided in said Ordinance, is violative of Appellant's rights under the Fourteenth Amendment of the Constitution of the United States. These claims the Appellee denies and the Missouri Supreme Court in the opinion and judgment here challenged determined the questions so raised by Appellant adversely to Appellant. With respect to the institutional use restriction of the Ordinance in question the State Supreme Court found the following:

> "While the use regulations exclude institutions from the "A" residence district, their exclusion is not absolute and location is authorized in the "D" and "E" residence districts and in the "F" (commercial) district, and in the "G" (industrial) district. Further, Section 8 of the Ordinance provides for the filing of a written application for institutional use in districts from which such use is excluded, and for notice, a hearing, a report by the City Planning Commission, and for authority to be granted by the City Council under certain circumstances. In case the City Planning Commission or the owners of 10% or more of the property within 1,000 feet of the premises object, the favorable vote of ¾ths of all members of the City Council is required to authorize the use. And see, Section 89.060 (Mo. Statutes 1949 Edition). In effect each application is ruled with reference to public health, safety, morals or general welfare after a hearing and report by the City Planning Commission. * * * In addition, the use of a specific part or all of Appellant's property for any specific institutional use or purpose is not presented by this record. The issue is not brought 'to exact focus.' The pleadings and evidence fail to show that any such application has been filed or denied, or that there is any specific use in prospect, or that any specific institutional use is contemplated. Appellant can not challenge the validity

of Section 8 of the Ordinance on hypothetical grounds. The question necessarily must be involved in the case before the Court. Rust v. Mo. Dental Board, 348 Mo. 616, 155 S. W. (2d) 80, 85. In the circumstances shown by this record no ground for equitable relief on this issue is presented, and we may not rule as to the validity of Section 8 supra."

It is apparent from the foregoing that the State Supreme Court disposed of Appellant's attack on the institutional use restrictions of the Ordinance upon adequate non-Federal grounds, and accordingly jurisdiction here can not be predicated on that portion of the State Court's ruling. (*Fox Film Corp.* v. *Muller*, 296 U. S. 207, 80 Law Ed. 158, 56 S. Ct. 183.)

II

No Substantial Federal Question Is Presented by the Attempted Appeal

The only remaining contention attempted to be presented is that a provision of the City Ordinance placing Appellant's property in a district wherein the use of property is limited to single family residences on tracts of not less than three acres, constitutes the taking of Appellant's property without due process of law for the sole reason that "the zoning law arbitrarily discriminated against the plaintiff in the use of its land, to its financial disadvantage while permitting others in different districts in close proximity to it to have broader market and development opportunities for land not any better suited environmentally or inherently for broader uses than plaintiff's land" (Tr. pp. 10-11). It is apparent that this does not present a substantial Federal question under such pleadings (see *Memphis Natural Gas Co.* v. *Beeler*, 315 U. S. 649, 86 Law Ed. 1090, 62 S. Ct. 857) and under the particular facts involved in this case. No authority is cited in Appellant's jurisdictional statement

herein in support of its contentions. The power of States and Cities to place restraints and restrictions on the use of property by zoning laws in furtherance of the general welfare of the community has long ago been so definitely determined that no substantial question is presented by this appeal entitling appellant to invoke the jurisdiction of the Supreme Court of the United States. See *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 71 Law Ed. 303, 47 S. Ct. 114; *Zahn* v. *Board of Public Works*, 274 U. S. 325, 71 Law Ed. 1074, 47 S. Ct. 594, and *Hadacheck* v. *Sebastian, et al.*, 239 U. S. 394, 60 Law Ed. 348, 36 S. Ct. 143.

The opinion of the State Supreme Court is replete with findings of fact substantiating the due process afforded appellant as well as the lack of any substantial Federal question. As stated by this Court in *Portland Ry., etc., Co.* v. *Oregon R. R. Commission*, 229 U. S. 397, 51 Law Ed. 1248, 33 S. Ct. 820:

> "In this case the facts found by the lower court and adopted in the (State) Supreme Court are supported by competent testimony; and this Court does not sit to retry issues of fact thus heard and determined by the properly constituted tribunals of the State having jurisdiction of the subject."

The Missouri Supreme Court found the following facts in its opinion in 246 S. W. (2d):

> "1. c. 773. The Ordinance in question #282 of the City of Ladue embraced all land in the City limits, it being that of a comprehensive zoning plan."
>
> "1. c. 773. Three acre minimum zoning has been known to the area including Appellant's property since the year 1934, and the City of Ladue adopted a zoning ordinance including a minimum three acre area in the year 1938."
>
> 1. c. 776. The Zoning Ordinance in question has tended to stabilize and preserve the value of the prop-

erty in the several districts and a reduction of the minimum area restrictions on Appellant's property would have a materially adverse effect on the value of all property in the general vicinity of Appellant's land."

"1. c. 776. Appellee, City of Ladue, planned its city services, such as fire and police protection, in accordance with the zoning plan in question."

"1. c. 779. Exclusion of Appellant's property would clearly interfere with the general zoning plan adopted for the benefit of the entire community."

Other controlling facts appear in the opinion of the State Supreme Court.

Appellee does not know how many hundreds of thousands of cities, towns and villages there are in the United States; but it is a matter of such common knowledge that this Court will judicially know that virtually all of them have enacted zoning ordinances. When we consider the possibility of this Court having to sit to retry or reconsider the facts involved in attacks on various sections of that many municipal ordinances we can better understand the reason for the rule in *Portland, etc.* v. *Oregon, etc., supra,* that gives finality to fact findings made by the State Supreme Court in cases of this kind. With these fact findings accepted and binding, and with the applicable rules of law for testing the validity and constitutionality of zoning laws having been heretofore established and charted by this Court as follows: (1) that where there is any reasonable basis for the zoning restriction the Courts will not substitute their judgment for that of the legislative body (*Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 71 Law Ed. 303, 47 S. Ct. 114); and (2) the mere fact that zoning restriction results in some diminution in value or loss of money is not sufficient to render a zoning law unconstitutional (*Zahn* v. *Board of Public Works*, 274 U. S. 325, 71 Law Ed. 1074, 47 S. Ct. 594), it is clear that no substantial question is presented which entitles Appellant

to invoke the jurisdiction of this Court, particularly when it is apparent that the reasonableness of the restrictive provision in question, as applied to Appellant's property, must turn upon multiple factual matters which have all been resolved adversely to Appellant by both the trial court and the State Supreme Court. Perhaps nothing illustrates the reasonableness of minimum area restrictions in zoning laws more pointedly than the fact that every reported case which we have been able to find dealing with minimum area restrictions sustains the validity of the restriction. (See *Dillard* v. *Village of North Hills*, 94 N. Y. S. (2d) 715; *Simon* v. *Needham*, 311 Mass. 560, 42 N. E. (2d) 516; *Gignoux, et al.* v. *Village of Kings Point*, 99 N. Y. S. (2d) 280 and *Elbert* v. *Village of North Hills*, 28 N. Y. S. (2d) 317.

WHEREFORE, Appellee respectfully moves that the appeal herein be dismissed or that the judgment and decree of the Supreme Court of the State of Missouri be affirmed.

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